

FLSA-549

June 5, 1974

This is in reply to your letter of March 11, 1974, asking, in effect, whether the 18 service engineers employed by your client, a national distributor of scientific and medical instrumentation, would be exempt from the pay requirements of the Fair Labor Standards Act as "professional" employees or, in the alternative, would the motor carrier exemption from overtime pay be applicable to their employment.

Section 13(a)(1) of the Act provides an exemption from both the minimum wage and overtime pay requirements for, among others, employees employed in a bona fide professional capacity. The basic requirements for the "professional" exemption are found in section 541.3 of Regulations, Part 541 and subsequent sections 541.300 through 541.315 which provide the explanatory material and interpretations relating to the basic requirements of the exemption. The determination as to whether the exemption under section 13(a)(1) is applicable must be made on the basis of the duties and responsibilities as well as the salary of an individual employee in a particular situation. The information in your letter indicates that the service engineers are employed at salaries approximating \$12,000 a year; they all possess either some college or technical school training and receive extensive on the job training in order to carry out the service function of their employer. Based on our review of the available information, it would appear that the duties of the service engineers do not require engineering training, but that the knowledge for the job is acquired principally through experience and training acquired through their employment. In this regard, the type of knowledge required for the professional exemption as set forth in section 541.3(a)(1) is knowledge of an "advanced type" which is customarily acquired by a prolonged course of specialized intellectual instruction and study (see section 541.302). Therefore, these service managers would not qualify for exemption as "professional" employees under section 13(a)(1) of the Act.

Their employment would, however, appear to come within the motor carrier exemption found in section 13(b)(1) of the Act, which exempts from its overtime compensation provisions, but not from its minimum wage, any employee subject to the jurisdiction of the Secretary of Transportation under Section 204 of the Motor Carrier Act. This means that any driver, such as the service managers, employed by a private carrier, whose duties affect the safety of operation of a motor vehicle engaged in transportation of property on public highways in interstate commerce is not required to be paid overtime compensation for hours worked over 40 in any workweek. Based on the information in your letter, it would appear that the reason these service managers carry large quantities of service parts on their trips throughout the various States in their territory is to insure that they are able to perform whatever technical repair services may be required. Accordingly, the transportation of such property by motor vehicle in interstate commerce is a distinct and definite reason for the trip by these service managers and that in those cases where, as a regular practice, a service manager transports this equipment across State lines they would qualify for the overtime exemption under section 13(b)(1) of the Act.

Sincerely,

Warren D. Landis
Acting Administrator
Wage and Hour Division